

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of National Comtel Network,  
Inc. (U-5341-C) and Paula Fellingham, an  
individual, for approval of Change in Control.

Application 05-11-014  
(Filed November 17, 2005)

**OPINION GRANTING TRANSFER OF CONTROL****1. Summary**

This decision authorizes Jeff L. Foss to transfer control of National Comtel Network, Inc. (NCN) to Paula Fellingham. This transfer of control is to take place through the transfer of 100% of the ownership interest in NCN to Fellingham by Foss, as more fully described in the application and exhibits attached to the application.

**2. Background**

NCN, a California corporation, was granted a Certificate of Public Convenience and Necessity (CPCN) to resell interexchange services in California. This authority was granted pursuant to Decision (D.) 93-11-038, which assigned NCN its corporate identification number U-5341-C, and D.95-03-038.

The CPCN granted NCN was expanded by D.04-01-011, dated January 8, 2004. That decision authorized NCN to provide limited facilities-based local exchange service, as well as resold local exchange telecommunications services, in the service territories of Pacific Bell Telephone (doing business as SBC), Verizon California Inc., Roseville Telephone Company (now known as SureWest Telephone), and Citizens Telecommunications Company of California as a

competitive local carrier (CLC). Its principal place of business is 18340 Ventura Blvd., Suite 218, Tarzana, California 91356.

Foss is an individual whose principal place of business is located at the same address as NCN.

Fellingham is an individual whose principal place of business is located at 192 Lake Breeze Road, Saratoga Springs, Utah 84043.

### **3. Proposed Transaction**

Foss and Fellingham entered into a memorandum for stock purchase whereby Fellingham will purchase 100% of the issued and outstanding stock of NCN from Foss. The proposed transfer of control is the result of personal investment decisions by the seller, Foss, and the buyer, Fellingham.

Joint applicants NCN and Fellingham represent that the transaction will be transparent to customers. The proposed change in control will not produce any immediate changes to the operations of NCN. NCN will retain its key senior managers. There will be no change of name, and the transfer of control will not result in any changes in rates, terms, or conditions of service.

There were no protests to this application.

### **4. Discussion**

In a situation where a person who does not possess a CPCN desires to acquire control of a company that possesses a CPCN, we apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Since NCN possesses a CPCN to resell local exchange and interexchange telecommunications services, we will apply the requirements of such authority to Fellingham

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to resell local

exchange and interexchange services must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Fellingham provided a bank statement that demonstrates she has sufficient financial resources to satisfy our financial requirement. In addition, the applicants provided biographical information on Fellingham and the current management team of NCN which will continue to manage NCN upon consummation of the proposed transfer of ownership. Therefore, we find that our financial and technical expertise requirements are satisfied.

For the following reasons, we conclude that it is reasonable to grant this § 854(a) application. First, applicants have satisfied our financial and technical expertise requirements. Second, NCN will continue to operate as it has in the past, using the same name and operating authority. Third, the public may benefit from the transfer of control to the extent the transaction enhances the ability of NCN to maintain and expand its services and operations in California. Fourth, there is no opposition to this application. For these reasons, we see no reason to withhold authority for the transfer of control before us here.

## **5. Procedural Matters**

In Resolution ALJ 176-3163, dated December 1, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Given this status public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3163.

All information placed under seal due to the sensitive, confidential, and proprietary information of NCN and Fellingham should remain sealed for a period of two years from the date of this order, and during that period should not be disclosed to anyone other than Commission staff except on the execution of a mutually accepted protective order or further order or ruling of the Commission or Administrative Law Judge (ALJ) then designated as the Law and Motion Judge.

## **7. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Therefore, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

## **8. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Michael J. Galvin is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. NCN is authorized to resell local and interexchange telecommunications services.
2. There will be no change in the name of NCN as a result of this transaction.
3. Customers will continue to receive service under the same rates, terms, and conditions after the transaction.
4. Fellingham has sufficient financial resources to meet the Commission's requirements to resell local exchange and interexchange telecommunications services.
5. Fellingham and her management team possess the necessary technical expertise required by the Commission.

6. Notice of this application appeared on the Commission's Daily Calendar of November 21, 2005.

7. There were no protests to this application.

**Conclusions of Law**

1. This is a ratesetting proceeding and no hearing is necessary.

2. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

3. This application should be approved and become effective immediately because it is not adverse to the public interest and the public may benefit from ability of NAC to maintain and expand its services and operations in California.

4. Approval of this application is not a finding of value of the rights and property being transferred.

**O R D E R**

**IT IS ORDERED** that:

1. Jeff L. Foss is authorized to transfer 100% of the ownership interests of National Comtel Network, Inc. (NCN) to Paula Fellingham.

2. All information placed under seal shall remain sealed for a period of two years from the effective date of this order except upon further order or ruling of the Commission or Administrative Law Judge then designated as the Law and Motion Judge. If protection of sealed information is needed beyond two years after the effective date of this order, NCN may file a motion stating the justification for further withholding of the sealed information from public inspection, or for such other relief as the Commission may provide. This motion shall be filed no later than 30 days before the expiration of the two year period specified in this ordering paragraph.

3. NCN shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized herein, within 10 days after the change of control authorized herein has taken place. A true copy of the instrument(s) of transfer shall be attached to the notification.

4. The corporate identification number U-5341-C assigned to NCN shall continue to be used by NCN, which shall be included on all original filings with this Commission and in the titles of other pleadings in existing cases.

5. The application is granted as set forth above and the authority granted shall expire if not exercised within one year of the effective date of this order.

6. Application 05-11-014 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.